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I. LAND AND PEOPLE

A. General framework

1. Belgium has an area of 30,519 km² and is bounded to the north by the Netherlands, to the east by Germany and the Grand Duchy of Luxembourg and to the south and west by France.

2. The country is situated not only in one of the most heavily populated and commercially active parts of the world but also at the heart of a major urban and economic axis. This highly urbanized zone extending from London to Milan contains half of Europe's main cities - more than 80 urban centres with populations of over 200,000. It is also the principal axis of communications and trade in Europe.

3. Belgium is thus at the crossroads between the economic and urban backbone of Europe and the important North Sea maritime region that stretches from Le Havre to Hamburg. It possesses varied and integrated communications networks covering the whole country and connecting with its neighbouring countries, facilitating domestic travel and international links.

4. By virtue of its geographical position, Belgium has throughout its history always been a meeting place, a gateway and a land of welcome for people, ideas and businesses.

5. Belgium opened itself up very early to international cooperation. In 1921, by signing an agreement with the Grand Duchy of Luxembourg to abolish restrictions on trade, establish a common Customs tariff and adopt a single financial and commercial policy, Belgium was paving the way for the later process of European integration. In 1951, it was one of the founding nations of the European Coal and Steel Community (ECSC), which envisaged the free movement of coal and steel products between the six Community countries. Its capital, Brussels, hosts the headquarters of several European institutions, the North Atlantic Treaty Organization (NATO) and some 850 international non-governmental organizations.

6. Belgium, as part of the Belgian-Luxembourg Economic Union (BLEU), has the highest volume of exports per capita in the world. The Union itself account for 3.4 per cent of total world exports, ranking ninth among the world's economic powers. Ninety per cent of its exports, representing about two thirds of GNP in value terms, go to the other industrialized countries, including 75 per cent to the States members of the European Union. Its exports are highly diversified, consisting of transport equipment, non-precious metals, electrical machinery and equipment, chemicals and pharmaceuticals, plastics, textiles, gems, etc.

B. Population

7. In 1992 the population of Belgium passed the 10 million mark. A century earlier, it was barely 6 million and growing at a steady 1 per cent a year.

Except during the two world wars, when the population declined sharply, the annual growth rate remained positive throughout the century, owing in particular to continued external migration: the foreign population, which represented 2 per cent of the total population in 1920, now constitutes 9 per cent of the population of the Kingdom.

8. Despite this influx, the economic crisis of the 1930s and a declining fertility rate since the end of the 1960s slowed population growth almost to zero during the two periods.

9. Independently of these historical contingencies, the population of Belgium, like those of other industrialized countries, has enjoyed the benefits of progress due in particular to the improvement of living conditions and advances in medicine. Three indicators are revealing in this respect:

(a) The spectacular fall in infant mortality, which reduced the death rate among children under one year of age from more than 150 per thousand in 1900 to less than 10 per thousand in 1990 (8/1,000 for boys and 6/1,000 for girls);

(b) The considerable increase in life expectancy, which has risen from an average of 45 years at the beginning of the century to 76 years today (nearly 73 years for men and 79 years for women);

(c) The survival of several generations (up to four generations may coexist at the present time).

10. The latest census, held in 1991, indicated that on 1 March 1991 Belgium had 9,978,681 inhabitants, of whom 5,102,699 were women and 4,875,982 were men. This figure included all Belgians and aliens having their main residence in the country, with the exception of international civil servants and related categories and military forces present in Belgian territory.

11. At that time, the Flemish region had 5,768,925 inhabitants, or 138,786 more than in 1981, Wallonia, including the German-speaking region (67,618 inhabitants) had 3,255,711 inhabitants, or 34,486 more, and the Brussels region 954,045 inhabitants, or 43,248 fewer than in 1981. The country's five main cities (Antwerp, Ghent, Charleroi, Liège and Brussels) had a total of 1,234,998 inhabitants.

12. On 1 January 1990, the number of European Union nationals living in Belgium was 541,000, or 61 per cent of the total foreign population.

13. As far as aliens other than from the European Union are concerned, the five most represented countries are Morocco, Turkey, the United States of America, Zaire and Algeria. Nationals of the Maghreb countries and Turkey represent 27 per cent of the foreign population. In all, 42 per cent of the aliens resident in Belgium live in Wallonia, 30 per cent in the Brussels region and 28 per cent in Flanders.

II. POLITICAL STRUCTURES OF BELGIUM

A. General framework

14. In 1994, following a reform process initiated in 1970, Belgium acquired a new Constitution, a coordinated and thoroughly revised version of the fundamental instrument dating from the birth of the Kingdom.

15. In 1831, the constituent body established a democratic State ruled by law and based on a flexible separation of powers, taking the form of a parliamentary monarchy and a decentralized unitary State (State, provinces, communes).

16. This configuration has been transformed by the emergence in the last 20 years of new public entities and by the constitution of a federal State composed of communities and regions.

17. The division of public powers is based essentially on devolution of the responsibilities, both ratione materiae and ratione loci, exercised by the national authority - today referred to as the federal authority - the communities and the regions.

18. The communities and regions are not subordinate entities, like the provinces and communes, but have the same standing as the federal authority. In jurisdictional terms, the entities have powers identical to those of the federal authority since their enactments, i.e. decrees and ordinances, have equal force in law.

19. The 1994 Constitution stipulates that Belgium comprises:

(a) Three communities: the French community, the Flemish community and the German-speaking community;

(b) Three regions: the Walloon region, the Flemish region and the Brussels region;

(c) Four linguistic regions: the French-speaking region, the Dutch-speaking region, the bilingual Brussels-capital region and the German-speaking region. Each commune of the Kingdom belongs to one of these linguistic regions.

B. The federal authority

20. The federal authority has powers to act only in matters for which it is formally given responsibility under the Constitution and laws passed in accordance therewith. The Constitution assigned residual powers to the communities and regions - that is, powers not expressly assigned by the constituent body or legislature to any of the above-mentioned authorities. However, this system will enter into force only when a list of federal powers has been established by a special majority law.

1. Federal legislative power

21. This power is exercised collectively by the King, the Chamber of Representatives and the Senate

22. The members of the two Chambers represent the nation and not only those who elected them. As required by the Constitution, the members elected to each Chamber are divided into a French linguistic group and a Dutch linguistic group in the manner prescribed by law.

23. The Chambers convene automatically each year and must remain in session for at least 40 days. The King announces the closure of the session. He may adjourn or dissolve the Chambers under the conditions established by the Constitution. Any parliamentarian appointed as a minister by the King vacates his seat and resumes his term of office only when his ministerial functions have ended.

24. The right of initiative is vested in each branch of the federal legislative power (presentation before the Chambers of bills (texts originating with the executive) or proposed legislation (parliamentary initiative)).

25. Except with regard to the budgets and laws requiring a special majority, a so-called "alarm bell" mechanism operates to prevent the adoption of any bill or proposed legislation containing provisions that might seriously affect relations between the communities (linguistic groups). In such a case, parliamentary discussion is suspended pending a substantiated opinion f ... the Council of Ministers.

26. The Chamber of Representatives has 150 members elected by direct universal suffrage. To be eligible, candidates must be Belgian, enjoy civil and political rights, be at least 21 years of age and be resident in Belgium. The term of office of a member of parliament is four years and such office cannot be held concurrently with that of regional or community councillor or minister.

27. Following the revision of the Constitution, the Chamber of Representatives now has sole political oversight of federal government policy (investiture and motions of no confidence). Likewise, it has exclusive responsibility in budgetary matters since it alone passes the financial accounts act and approves the budget. The Chamber also has exclusive responsibility in matters of naturalization and the criminal and civil liability of ministers and in establishing the size of the armed forces.

28. The Senate will henceforth comprise 71 senators, as follows:

- 40 senators elected directly by the Dutch electoral college and the French electoral college, on the basis of 25 for the former and 15 for the latter;

- 21 senators appointed from among the community councils, with 10 being appointed by the Flemish Community Council, 10 by the French Community Council and one by the German-speaking Community Council;

- 10 co-opted senators, chosen by the above two categories, 6 being selected by Dutch-speaking senators and 4 by French-speaking senators;

- Senators by right, i.e. members of the royal family who automatically become members of the Senate at the age of 18 years but are not entitled to speak or vote until the age of 21 years.

29. The new configuration of the Senate aims to meet three kinds of requirement: the need for democratic legitimacy (presence of senators elected directly); representation of the federal entities (senators from the community councils); and the symbol of parity (presence of equal numbers of senators appointed by the community councils).

30. The minimum age requirement to be elected senator has been reduced from 40 to 21 years.

31. The remodelled powers of the Senate will be essentially of a constituent and legislative nature.

32. In certain matters, the Senate will exercise powers identical to those of the Chamber (perfect bicameral system), namely: the declaration of the revision of the Constitution and the revision itself; the passage of certain laws regarded as affecting the basic structures and fundamental interests of the State; some matters having a bearing on international relations (treaty ratification instruments); the organization of the courts and tribunals and legislation relating to the State Council; and laws approving cooperation agreements concluded between the State, the communities and the regions.

33. The Senate will have exclusive responsibility concerning the resolution of conflicts of interest between the assemblies. In addition, draft instruments for the ratification of international treaties which must be adopted by the two assemblies will be presented by the Government, first to the Senate, and then to the Chamber, thus giving the former a more important role in the area of international affairs.

2. Federal executive power

34. Federal executive power, as regulated by the Constitution (art. 37), rests with the King. In fact, the executive is a structure with two heads, since it includes the King and the ministers.

35. The person of the King is inviolable:

- At the civil level: no action may be brought against him except in matters relating to his estate, in which case he is represented by his civil list administrator;

- At the criminal level: no prosecution may be initiated against him;

- At the political level, only the minister who countersigns or endorses the royal enactment bears responsibility. These privileges concern only the King himself and do not extend to members of his family.

36. The King ascends the throne only after taking an oath before the two Chambers in joint session. The King appoints and dismisses his ministers, such offices being reserved exclusively for Belgians.

37. The Council of Ministers has a maximum of 15 members and, with the possible exception of the Prime Minister, as many French-speaking as Dutch-speaking ministers (principle of parity).

38. Ministers are accountable to the Chamber of Representatives. No minister can be prosecuted or investigated for any opinions he may have expressed in the performance of his duties.

39. The Chamber of Representatives has the right to indict ministers or bring them before the Court of Cassation the only forum entitled to judge them in joint session. The law determines questions of responsibility and the penalties and procedures in such circumstances.

40. The King appoints or dismisses federal secretaries of State, who as assistants to ministers, are members of the federal Government but not of the Council of Ministers.

41. The King's prerogatives include conferring ranks in the armed forces and making appointments in general administration and foreign affairs, except in cases prescribed by law.

42. The King issues the necessary regulations and decrees for the implementation of laws. He approves and promulgates the laws.

43. The King appoints judges and executes decisions and judgements, and may exercise the right to grant pardons. He also has the right to mint coinage in execution of the law and to confer honorary titles of nobility and award military honours in keeping with the requirements of the law in that regard.

C. The Communities

44. Each of the community and regional entities has a deliberative assembly, the Council, and an executive body hereafter called the Government.

45. In the Flemish part of the country, unity is achieved by having a single Council, the Flemish Community Council, and a single Executive which at the same time exercises jurisdiction over the Flemish Region and which does not have its own bodies. This is not the case for the other entities - the French Community, the German-speaking Community, the Walloon Region and the Brussels-Capital Region.

The Councils

46. The Flemish Community Council has 124 members, that is 118 members who are elected directly in the Flemish region and 6 members from the Dutch-speaking group of the Council of the Brussels-Capital Region.

47. The French Community Council has 94 members of whom 75 are members of the Walloon Region Council and 19 are members elected by the French-speaking group of the Council of the Brussels-Capital Region.

48. The Council of the German-speaking Community is made up of 25 directly elected members.

49. The Councils are made up of directly elected members; the mandate of a Council member is theoretically incompatible with that of a deputy or a senator, except for Community senators who represent their Community in the Senate (federal authority). The ban on holding two offices simultaneously concerns only federal parliamentary duties and regional or Community parliamentary duties. It is still constitutionally possible to be both a member of a Regional Council and a member of a Community Council.

50. Three Councils (French and Flemish Communities and Walloon Region) have within certain limits, constitutive autonomy, in that they can adopt decrees by an augmented majority, dealing with issues relating to elections and the composition and operation of Councils and of their governments.

51. Council elections are held by direct suffrage every five years and coincide with the European elections, the Brussels regional elections and the elections of the Council of the German-speaking Community.

The governments

52. The members of each regional or Community government are elected by their Councils, but not necessarily from among its members. The political and judicial responsibilities of the members of these executive bodies are based on those at the federal level.

53. Each of the above-mentioned governments appoints a President from among its members. The Crown, before which he takes an oath, ratifies this appointment.

54. The system of "constructive motion of no confidence" governs relations between the Councils and the governments as regards the dissolution of the latter.

55. The number of members of Community governments is as follows:

- 11 for the Flemish Community (Community and regional powers combined);
- 4 for the French Community;
- 3 for the German-speaking Community.

The powers of the Communities

56. These powers covers the following matters:

57. Cultural matters. The constituent body did not make out a detailed list of the subjects that come under the heading of "cultural matters". The legislature, on the basis of an act adopted by a qualified majority, identified 17 items in this area such as language protection, the arts, cultural heritage, support for the press, youth policy, leisure activities, and intellectual, ethical, artistic and social training.

58. Education. Virtually all education, from nursery schools to universities has been transferred to the Communities, which are responsible for the organizational aspects of education and for the recognition of and granting of subsidies for education provided by other organizing authorities.

59. In this area, federal jurisdiction is limited to establishing when compulsory schooling is to start and to finish, the minimum requirements for the awarding of degrees, and the pension scheme.

60. Use of languages. Article 30 of the Constitution provides that the use of languages is optional; it can be regulated only by law, and then only for official documents and for judicial matters.

61. Since 1970, the French and Flemish Communities have been empowered to regulate the use of languages in three areas: administrative matters, education in establishments subsidized by the authorities; and industrial relations between employers and their staff, and also in company instruments and documents required by the law and regulations.

62. This Community jurisdiction is exercised over a smaller area than other Community powers. The federal parliament has jurisdiction for the bilingual Brussels-Capital Region, the German-speaking region, those services which extend beyond the linguistic region in which they are established, the federal and international institutions designated by law whose activities cover more than one Community; and communes with special linguistic systems.

63. Belgium is divided into four linguistic regions:

(a) The Dutch-language region, which includes the five Flemish provinces;

(b) The French-language region, which includes the five Walloon provinces except for the nine communes in the German-speaking region that form part of the province of Liège;

(c) The bilingual Brussels-Capital Region, which comprises the 19 communes in the district of the same name.

64. Bearing in mind the mixture of languages in the areas bordering on the boundaries of the linguistic regions and around Brussels, the legislature granted special status, in the form of exemptions to communes with relatively large linguistic minorities.

65. Personalizable matters. This term covers matters which, by their very nature, are closely related to the personal and social development of people and call for action by Community authorities.

66. Under a special act, personalizable matters are divided into two categories:

(a) Health policy, which includes medical care policy, health education and preventive medicine;

(b) Social assistance, which includes family policy, welfare, reception and integration of immigrants, policies regarding disabled persons, senior citizens, young people and the welfare of detainees.

67. There are some significant exceptions to these Community powers, for which the federal authorities retain competence. Health and disability insurance, in the health policy area, and some aspects of civil law, criminal law and the organization of juvenile courts fall within its jurisdiction, as does the enforcement of the right of all people to social assistance, mainly through public social welfare centres.

68. The Communities also exercise jurisdiction in the field of scientific research and carry out administration of local communities (communes) in Community matters.

69. The budget of the French and Flemish Communities is financed by:

- Internal non-fiscal receipts (in connection with the exercise of their jurisdiction, for example education enrolment fees);
- Shared taxes, which are national taxes collected throughout Belgian territory, of which all or part of the proceeds are allocated to the Communities (VAT receipts and part of personal income tax);
- Radio and television licence fees;
- Loans in accordance with the conditions and procedures established by law.

The special system of the German-speaking Community

70. The unique aspects of its status are due to its size (854 km²) and its limited number of inhabitants (68,000 in 1993). Moreover, it is the only Community situated in a single linguistic and political region. The fact remains, however, that under the Constitution and the law it has the same far-reaching autonomy as the other two Communities.

71. Its powers are identical to those of the other two Communities, but they are determined by a simple-majority law.

72. It can also exercise certain powers emanating from Wallonia, on the basis of agreements reached between the governments of these two entities.

73. To avoid a proliferation of authorities, the constituent body left it to the legislature to entrust to the German-speaking Community certain duties which, in fact, are usually the responsibility of other administrative authorities.

74. There are 25 members in its Council elected by universal suffrage, and its government, which includes three members elected by the Council, has its own administration.

D. The Regions

75. Belgium has three regions which are distinct from the three Communities: Flanders, Wallonia and the Brussels-Capital Region. The respective powers and areas of jurisdiction are the same for the first two, the last has its own mechanisms deriving mainly from the cohabitation of French and Dutch speakers within its territory.

76. In Flanders, regional powers are exercised by the Council and the Flemish Community government (principle of the merging of Flemish executive bodies and Councils).

77. Wallonia and the Brussels-Capital Region have their own bodies (councils and executive bodies).

78. Regional powers cover:

(a) Physical planning, as well as the protection of monuments and places of interest;

(b) The principal powers relating to the environment and water policy;

(c) Rural development and nature conservation;

(d) Housing and the monitoring of dwellings which represent a danger to cleanliness and public health;

(e) Various matters regarding agriculture;

(f) Economic powers such as economic policy, regional aspects of credit policy, sales and export policy and natural resources. On this point, it should be noted that, in exercising their powers, the Regions must respect the economic union and the monetary unity over which the federal State presides and whose content is established by legislation and international treaties (European Union framework). The federal authorities have exclusive jurisdiction in the following areas: monetary policy, financial policy and savings protection, prices and incomes policy, laws relating to competition and trade practices, commercial law and company law, professional entry requirements, industrial and intellectual property, quotas and licences, labour and social security law;

(g) Energy policy;

(h) Extensive prerogatives with regard to local communities (financing, organization and supervision);

(i) Powers with respect to employment (worker placement, development of programmes to reduce unemployment, application of standards relating to foreigners);

(j) Public works and transport (roads, ports, dykes, public transport) the equipping and operating of public airports, with the exception of Brussels National Airport;

(k) As for the Communities, scientific research including research involved in applying international and supranational agreements and instruments.

79. It should be recalled that, at the moment, the Communities and Regions have only powers defined by a special law. Besides the fiscal power they have, they do nevertheless have additional powers which allow them to:

- Adopt measures concerning the infrastructure needed to exercise their powers;

- Establish decentralized services, establishments and enterprises or to acquire an interest in them;

- Adopt decrees establishing as offences breaches of their provisions and, within certain limits, the penalties for these breaches;

- Carry out public expropriations.

The specific status of the Brussels Region

80. This Region, which is comprised of 19 communes of the country's federal capital, exercises the same jurisdiction as the other two Regions and has a Council and a government (five members). The coexistence in this Region of two unequally represented communities, however, has had an influence on the formative and procedural rules established by law. Owing to its dual communities, the Brussels Region does not have constituent autonomy. This means that the Council may not alter its composition, its operating principles, or the status of its members.

81. The organization of the Council is based on the principle of two linguistic groups which exercise their own powers and entail the distribution of responsibilities in the various Council bodies. Apart from the President, there is equal representation of both groups in the government; two members are French-speaking and two Dutch-speaking, and there are also three secretaries of State who are not members.

82. Specific institutions are responsible for exercising Community powers in the bilingual Brussels Capital Region. They are the French Community Commission (COCOF), the Flemish Community Commission and the Joint Community Commission.

83. Community matters related to one of the two French or Flemish communities are called "unicommunitarian" and are dealt with by the French or Flemish Community Commission under the supervision of their respective Communities.

84. Personalizable matters which cannot be linked exclusively to one Community are called "bi-personalizable" and are managed by the Joint Community Commission, which also has jurisdiction in Community matters of common interest.

85. Cultural matters which are not related to an individual Community constitute the "bicultural" sector managed by the federal authorities (major infrastructures for activities relating to the arts).

E. Cooperative relations within the Belgian federal system and conflict resolution

86. The principle of federal loyalty is established by the Constitution and provides that neither the federation nor the federated entities should, in the exercise of their powers, upset the structural balance of the whole. A very intricate network of mechanisms and procedures has been set up in order to achieve this aim, on which the good relations between the many institutional entities in Belgium depend.

87. Three mechanisms have been set up to prevent, and if necessary resolve, conflicts of interests between these entities. These sorts of conflicts arise from political differences between authorities (when one component's initiative affects the interests of one or more others), and not from the violation of a rule of law.

(a) The Consultation Committee which is made up of 12 members, 6 of whom represent the federal Government, the other 6 Community and regional governments. This body, whose powers are established by law, takes decisions by consensus.

(b) The 15 inter-ministerial conferences are both flexible structures for consultation and dialogue, and favourable places for the negotiation of cooperation agreements.

(c) The cooperation agreements that State entities are authorized, and even in some cases required, to conclude can relate to the setting up and joint management of common services and institutions, the joint exercise of powers or on the development of joint initiatives. In the area of international relations, for example, agreements have been concluded between the various entities competent to represent Belgium in international organizations, on the procedures for the conclusion of international treaties.

88. With regard to the prevention of conflicts of jurisdiction arising from the violation of legal rules regarding the distribution of powers among the various entities, solutions must take the form of the application of a rule of law and require recourse to legal channels.

89. The legislative section of the Council of State, in performing its advisory function with regard to preliminary drafts or bills, draft decrees or draft ordinances, may find that the rules regarding the distribution of powers among the State, the Regions and the Communities have been misunderstood and return the texts concerned to the Consultation Committee.

90. The Court of Arbitration is empowered to settle conflicts of jurisdiction. This Court, which is made up of 12 members (6 French-speaking and 6 Dutch-speaking, half of whom have judicial, and the other half parliamentary, backgrounds), hands down judgements when a legislative body has violated the rules relating to the distribution of powers or specific articles of the Constitution relating to respect for the principle of non-discrimination and the protection of philosophical and ideological minorities.

91. Matters can be referred to the Court of Arbitration by the various governments and by the Presidents of the Assemblies on the request of two thirds of their members. An appeal can also be lodged by any private individual who can prove a personal interest, within the six months following the official publication of the contested provision.

III. GENERAL LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS

A. Judicial, administrative or other authorities having jurisdiction affecting human rights

92. In the exercise of their functions, all the Belgian authorities have jurisdiction to apply the human rights set forth in the international instruments ratified by Belgium and in the Belgian Constitution and Belgian laws.

93. Certain jurisdictional authorities are entrusted with the task of verifying respect for human rights:

(a) The Court of Arbitration is a court "separate from the three authorities constituted at the national level and a fortiori from the authorities set up at the community and regional levels ... If the Court of Arbitration absolutely must be classified as one of the authorities established and governed by the Constitution, it is certainly most appropriate to include it with the authority responsible for framing or amending the Constitution" (F. Delperee and A. Rasson-Roland, Recueil d'études sur la Cour d'arbitrage 1980-1990, Bruylant, Brussels, 1990);

(b) The courts of justice:

The Court of Cassation;

The five Courts of Appeal (Brussels, Ghent, Antwerp, Liège and Mons);

The nine Courts of Assize;

The 26 judicial circuits each have a court of first instance, a labour tribunal and a commercial court;

The military tribunals;

(c) The administrative courts, the principal one being the Council of State.

B. Remedies available to an individual who claims that his rights have been violated, and systems of compensation and rehabilitation existing for victims

1. Remedies

94. Any person whose rights and freedoms have been violated has an effective remedy. Apart from political and administrative remedies, it is chiefly remedies before the courts - the bedrock of protection of fundamental rights as provided for in Belgium - that must be considered here. The relevant principle is stated in article 92 of the Constitution. Disputes relating to civil rights fall within the exclusive jurisdiction of the courts. Disputes relating to political rights are in principle a matter for the courts but by law may be removed from their jurisdiction (under art. 93 of the Constitution).

95. Violation of the rules that guarantee fundamental rights can give rise to three kinds of action: (a) a criminal or civil action before the courts and tribunals; (b) an application for annulment made to the Council of State, and (c) an application for annulment made to the Court of Arbitration.

(a) Criminal action

96. Criminal proceedings are brought before the courts and tribunals having jurisdiction in penal matters. Any act contrary to fundamental rights constitutes an offence under criminal law and is punishable under the relevant article of the Penal Code. Mention should be made, in particular, of titles VIII and IX of the Code, which deal respectively with crimes and offences against the person and with crimes and offences against property.

97. In addition, two titles of the Code deal with offences committed by public officials (title II containing a chapter 3 entitled: "Offences committed by public officials in breach of the rights guaranteed under the Constitution", and title IV entitled "Crimes and offences in breach of public order committed by officials in the performance of their duties (...)"). Chapter 3 of title II deals mainly with arrest and illegal and arbitrary detention (art. 147) and unlawful entry (art. 148). Further, article 151 makes punishable any other arbitrary act committed in breach of the rights and freedoms guaranteed under the Constitution, while title IV deals with a number of more general offences such as misappropriation, extortion, corruption and misuse of authority.

98. Lastly, it should be noted here that proceedings may be brought against public officials without prior authorization (Constitution, art. 24). Only ministers are subject to a special regime (under arts. 90 and 134 of the

Constitution: they may be indicted only by the House of Representatives and tried only by the Court of Cassation for crimes and offences committed in the performance of their duties).

(b) Civil action

99. Civil proceedings must be brought before the courts and tribunals. On the basis of articles 1382 et seq. of the Civil Code, concerning liability for damage to property, the civil liability of administrative officials may be incurred as a consequence of the violation of a fundamental right even if the officials concerned were acting in the exercise of public authority.

(c) Application for annulment

100. The administrative section of the Council of State hands down decisions on applications for annulment filed on grounds of breach of formal requirements that are substantial or are prescribed on pain of nullity, or of excessive or wrongful use of authority, against acts or regulations of the various administrative authorities or decisions in administrative disputes cases (art. 14 of the consolidated laws on the Council of State). Accordingly, it can hear applications impugning acts of the administrative authorities on the basis of violation of the constitutional or legal provisions regarding fundamental rights (there is, for instance, a wealth of case-law on the principle of equality as laid down in art. 6 of the Constitution). An Act of 17 October 1990 empowers the Council of State to impose default fines in order to enforce its decisions of annulment. This Act is designed to spare litigants the complication of civil liability proceedings while at the same time preventing damages from being incurred as a result of non-performance of the Council's decisions. The legislature has revoked the immunity from execution of the administrative authorities and recognized the power of injunction of the Council of State, which cannot, however, interfere with the jurisdiction of the courts over matters of reparation in kind (on the basis of arts. 1382 et seq. of the Civil Code).

101. The Court of Arbitration has the power to verify the compatibility of legislation (national laws, community and regional decrees, ordinances of the Brussels-Capital Region) with certain rules of the Constitution, in particular those set forth in articles 6 (equality before the law), 6 bis (non-discrimination and protection of the rights and freedoms of ideological and philosophical minorities) and 17 (Freedom of Education). Any person with adequate grounds may file an application for the annulment, in whole or in part, of an act, decree or ordinance.

102. The Court of Arbitration, in its first decision on an admissible application based on articles 6 and 6 bis of the Constitution (decision No. 23/89), incorporated a number of concepts within the very definition of the principles of equality and non-discrimination (objectiveness and reasonableness of the justification of a criterion of differentiation, evaluation of this justification with respect to the purpose and effects of the norm, reasonable measure of proportionality between the means employed and the end itself), enabling it to verify implementation of these principles by the lawmakers in a fairly rigorous manner. On this basis, the Court annulled a legal provision which constituted excessive interference with a civil

liberty, namely freedom of association, the interference being considered disproportionate in relation to the objective sought by the legislator.

103. In a decision of 23 May 1990 (decision No. 18/90), the Court of Arbitration decided that its oversight extended to discrimination in the enjoyment of rights guaranteed by international instruments. The Court held that by making discrimination in the enjoyment of a right guaranteed by the European Convention on Human Rights punishable, it was overseeing the constitutionality of the law, and not its conformity with the treaty, since article 6 bis of the Constitution proclaims that "enjoyment of the rights and freedoms granted to Belgians must be assured without discrimination". The Court noted that "the rights and freedoms guaranteed to Belgians by article 6 bis of the Constitution do include the rights and freedoms deriving from international treaty provisions which are binding on Belgium and rendered applicable in domestic law by an act of assent. This is so at the very least for rights and freedoms deriving from provisions having direct effect".

2. Systems of compensation and rehabilitation

104. An action of an administrative authority constitutes a fault when it infringes human rights. If this fault gives rise to damage, material or moral, the victim can make a claim for compensation through the civil courts. In the case of exceptional damage, the victim may also seek relief from the administrative section of the Council of State. As the legislative power is not an administrative authority, the Council of State cannot hear an application regarding compensation for exceptional damage caused directly by the law (Cons. d'Etat, 29 June 1977, P., 1980, IV, 36).

105. Since 1985 Belgian law has provided for a fixed-rate subsidiary payment to be made by the State in the event of bodily harm caused to persons sustaining serious injury to their body or health as a result of an intentional act of violence. This financial contribution from the State towards compensation of the victim is provided when the victim cannot be compensated by other means. The legislator was thinking in particular of the hypothetical case in which a victim cannot obtain reparation for the harm done to him from a delinquent who is either insolvent or unknown.

106. With regard to pre-trial detention, Belgian law provides for the right to compensation in cases of deprivation of liberty in breach of the European Convention on Human Rights and in cases of "inoperative" arrest and detention.

(a) Deprivation of liberty in breach of the European Convention on Human Rights

107. Belgium, prompted by respect for the European Convention, established under the Act of 13 March 1973, concerning compensation in cases of "inoperative" pre-trial detention (art. 27), a right to compensation by order of the ordinary courts for anyone who has been deprived of his liberty in breach of the Convention. Detention is, in this case, regarded as the result of a fault of the State and the victim may institute proceedings in the ordinary courts against the Belgian State in the person of the Minister of Justice.

(b) "Inoperative" arrest and detention

108. The Belgian legislature has taken the view that, under certain conditions, compensation should be allowed for material and moral harm sustained by the victim of "inoperative" pre-trial detention. In applying these principles, the Act of 13 March 1973 goes further than the requirements of the European Convention and the International Covenant on Civil and Political Rights. For example, article 28 of the Act of 13 March 1973 has extended the right to compensation to include indemnization for anyone who has been placed under pre-trial detention and who is able, in certain circumstances and under certain conditions, to claim compensation. The Act covers cases of persons detained lawfully in pre-trial proceedings for acts which, among other things, have not been declared proven by courts or which cannot be definitely attributed to the accused, who is entitled to the benefit of the doubt. Pre-trial detention is not, in this instance, the result of a fault of the State. The circumstances alone can lead to a finding that the arrest or detention is "inoperative", even though no blame can be attached to the examining magistrate or the courts.

109. The conditions for compensation are governed by article 28, paragraph 1, of the Act of 13 March 1973, specifically:

(a) The person must have been held in pre-trial custody for more than eight days;

(b) The arrest or detention must not have been provoked by the person's own conduct;

(c) The person must have been exonerated directly or indirectly by an enforceable judicial decision;

or if, after benefiting from an order dismissing the proceedings, the person submits factual evidence or legal arguments proving his innocence;

or if the person has been arrested or held in custody following extinction of the prosecution by prescription;

or, finally, if an order dismissing the proceedings expressly states that the act which gave rise to the custody does not constitute an offence.

110. The compensation procedure requires the person concerned to file an application with the Minister of Justice, who must give a ruling within six months. If the Minister of Justice refuses to grant compensation, or if the compensation is deemed insufficient by the victim, or should no decision be taken within the six months, the applicant can lodge an appeal with a special board composed of three members: the First President of the Court of Cassation; the First President of the Council of State; and the senior member of the National Bar Association. The parties (applicant and representative of the Minister of Justice) are heard together with the Prosecutor-General of the Court of Cassation. The decisions of the special board are not open to appeal.

111. When, following an application for judicial review of an enforceable judgement, the Court of Cassation quashes a conviction for homicide without referral or the court of referral acquits the accused or defendant, the decision must state that the innocence of the accused or defendant has been established. The decision must be published in extract, at the request of the person concerned or his assignees and at the suit of the Procurator-General, in the Moniteur belge and in a newspaper of the province in which the quashed conviction was handed down. Notice must also be given, under the same conditions, both in the commune where the offence was reported and in the commune where the original decision was rendered. Compensation must be paid from public monies either to the convicted person or to his assignees, the amount being fixed by the Government. Similar compensation may be paid where the penalty has been reduced. If compensation is not granted, if the amount in question is deemed insufficient or if no decision is taken by the Government within six months of an application for compensation by the convicted person or his assignees, the latter may within 60 days following the Government's decision or following the expiry of the period within which it should have taken its decision, lodge an appeal with the board established under article 28, paragraph 4, of the Act of 13 March 1973 concerning compensation in cases of inoperative pre-trial detention.

112. Where enforceable decisions rendered by the criminal courts are based on a provision of an act, decree or order which has subsequently been annulled by the Court of Arbitration, or of a regulation adopted pursuant to such act, decree or order, they may be revoked in whole or in part by the court which took them. The court hearing the request for revocation may, if the convicted person is being held under the decision whose revocation is requested, order the person's release on bail. If the supporting arguments appear to be strong and likely to justify the revocation requested, the court may also order the suspension of all measures of execution or application of the decision subject to revocation. The judge may, at the convicted person's request, order that his decision of revocation be published in extract in a daily newspaper designated by him. The judge must order reimbursement of any fine wrongfully levied, with interest at the legal rate for the period since it was levied. Article 28 of the Act of 13 March 1973 concerning compensation in cases of inoperative pre-trial detention is applicable to the convicted person wrongly held pursuant to the revoked judgement.

113. An action for compensation for damage caused as a result of an irregular legislative act may be brought before a court of justice. The judge is required in principle to refer the matter to the Court of Arbitration for a preliminary ruling on the irregularity.

C. Protection of the rights referred to in the various human rights instruments

114. Human rights are protected by the Constitution and by various acts guaranteeing and governing such rights, including the acts ratifying the relevant international treaties, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights.

115. The rights guaranteed by the Constitution include:

Equality before the law (art. 10) and enjoyment, without discrimination, of recognized rights and freedoms (art. 11);

Liberty of person (art. 12);

The right to a judge assigned by law (art. 13);

Lawfulness of penalties (art. 14);

Inviolability of the home (art. 15);

The right to respect of property (art. 16);

Freedom of thought, conscience, religion and expression (arts. 19 and 20);

Freedom of education (art. 24);

Freedom of the press (art. 25);

The right to assemble "peacefully and without arms" (art. 26);

The right to freedom of association (art. 27);

The right to submit petitions to the political authorities (art. 28);

Freedom from interference with correspondence (art. 29);

Freedom in the use of languages (art. 30);

Political rights (arts. 42 to 115 ter);

Proper administration of justice (arts. 144 to 159).

116. The new 1994 coordinated version of the Constitution contains an extended list of protected and guaranteed human rights. Article 23 stipulates that every individual has the right to a life consistent with human dignity. Accordingly, economic, social and cultural rights are guaranteed by laws and decrees which lay down the conditions for the exercise of them. These rights include:

"1. the right to work and to freely choose a gainful activity, in accordance with a general employment policy designed, inter alia, to ensure as the most stable and highest level of employment possible, the right to equitable working conditions and fair remuneration and the right to information, consultation and collective bargaining;

2. the right to social security, health care and social, medical and legal assistance;

3. the right to decent housing;

4. the right to the protection of a healthy environment;

5. the right to cultural and social fulfilment."

D. How are human rights instruments incorporated into national law?

117. In Belgium, in order for the provisions of an international treaty to be incorporated into national law, the treaty must be approved by the legislative chambers, in accordance with article 68 of the Constitution, ratified by the Crown as a branch of the Executive and brought to the attention of the citizens by its publication in the Moniteur belge.

E. Can the provisions of the various human rights instruments be invoked before, or directly enforced by, the courts or administrative authorities or must they be transformed into internal law or administrative regulations in order to be enforceable by the authorities concerned?

118. When no provision of an international treaty determines expressis verbis whether all or part of its provisions have a direct effect in the internal law of the contracting States, under Belgian law it is for the court to decide whether a treaty provision is directly applicable. The problem is one of interpretation which the court must resolve, mainly in the light of articles 31 to 33 of the Vienna Convention on the Law of Treaties of 23 May 1969. In Belgium, it is generally recognized that an international provision produces direct effects when it is clear and comprehensive, when it requires the Belgian State either to refrain from action or to act in a specific manner and when it may be invoked as a source of law by individuals without need for any additional internal legislation for the purpose of implementation.

119. The International Covenant on Civil and Political Rights, for example, does not determine specifically whether its provisions are directly applicable. Consequently, in accordance with the principles mentioned above, direct applicability is a matter that must be settled by the court. This is what the Court of Cassation of Belgium did in a decision of 17 January 1984 by affirming that article 9, paragraph 2, of the Covenant produced direct effects in internal law for individuals. Since then, the Court of Cassation has confirmed such direct applicability in the case of other provisions of the Covenant.

120. The legal effect of the provisions of an international treaty also depends on their recognized place in the hierarchy of internal law in the event of conflict with national provisions. In Belgium, several attempts have been made, in the course of constitutional review procedures, to incorporate into law a general principle designed to bring the authority of treaties into line with that of the provisions of internal law. Thus far, all such attempts have failed. Consequently, the Court of Cassation provided

the solution, in a decision on 27 May 1971 in the case of S.A. Fromagerie Franco-Suisse Le Ski. The Court affirmed the primacy of provisions of international treaties having direct effects in internal law over provisions of national origin, even subsequent ones. A Belgian court may therefore apply national provisions only if they are compatible with those of international treaties directly applicable in internal law. It verifies, inter alia, the conformity of national law with the directly applicable provisions of the International Covenant on Civil and Political Rights. This had been done in the case of the aforementioned decision of 17 January 1984 by the Court of Cassation.

F. Institutions or national machinery with responsibility for overseeing the implementation of human rights

1. Social welfare centres

121. Each commune in the Kingdom is served by a social welfare centre. The task of these public institutions is to provide social welfare for the purpose of enabling every individual to lead a life consistent with human dignity. Such assistance is the duty of the community. Aid provided by the welfare centres is not only palliative or curative, but also preventive. It may take the form of material, social, medical, medico-social or psychological aid. In some cases, the centres may even offer legal aid to certain individuals since article 60, paragraph 2, of the constitutional Act of 8 July 1976 on social welfare centres states that the centres "shall provide all relevant advice and information and take steps to secure for the persons concerned all the rights and benefits to which they may be entitled under Belgian or foreign legislation". Some welfare centres have hired lawyers or concluded agreements with the Bar Association or Chamber of Notaries. Persons granted legal aid by the welfare centres can obtain counsel either from clinics run by the centres or by making an appointment themselves with a lawyer.

2. Legal aid bureaux

122. To assist persons with insufficient means, the Judicial Code (arts. 455 and 455 bis) provides for the establishment of legal aid bureaux by the council of each bar association (there is a bar for each district). The individual may go to a legal aid clinic either in the district of his domicile or residence or in the district where the court that hears or will hear the case for which he wishes the assistance of a lawyer has its seat. If the conditions for pro deo are met, the director of the bureau assigns a lawyer, usually a trainee, to defend the person's interests. The State grants an allowance to the trainee lawyer assigned by the legal aid bureau in respect of the services for which the assignment was made.

3. Miscellaneous organizations

123. These include the permanent education associations subsidized by the communities (for example, family planning centres, the "écoles des devoirs", associations for the integration of immigrants) and non-governmental organizations (the Belgian sections of Amnesty International, the International League for Human Rights, International Movement ATD Fourth World).

IV. INFORMATION AND PUBLICITY

124. Belgium ensures wide dissemination of the various international legal instruments concerning human rights. Official events organized by the public authorities to mark the anniversaries of significant conventions or texts (such as the fortieth anniversary of the Universal Declaration of Human Rights) are generally accompanied by the publication of documents or booklets for distribution among the various sections of the population. Numerous publications are also issued by Belgian non-governmental organizations actively involved in the protection and promotion of human rights.

125. The mass media also contribute to the widest possible dissemination of such information and human rights questions are the subject of numerous public debates.

126. At all levels of education, courses geared to the requirements of students are devoted to general or more specific aspects of human rights.

127. Specialized documents on human rights are also distributed to some categories of State officials vested with public authority (for example, the police, armed forces, judges).

128. The international human rights conventions are published, on their ratification, in the official journal (Moniteur belge) in the national languages.

129. As regards the preparation of reports for the monitoring bodies established under the United Nations Human Rights instruments, the Ministry of Foreign Affairs in practice seeks to cooperate and provide the necessary coordination with the relevant national ministries concerned, as well as with the three Belgian communities in so far as their respective powers are concerned. The accomplishment of this demanding task remains contingent on the availability of staff in the relevant services, where staffing levels have been reduced considerably in the past few years, and on uncertainties due to the complexity of the institutional structures peculiar to Belgium. Thus far, no external source has been used for the preparation of these reports, which are not the subject of public debate.